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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/846,786	05/01/2001	Brian P. Holt	51126CON1	5140

7590 04/10/2002

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[REDACTED] EXAMINER

CLINGER, JAMES C

[REDACTED] ART UNIT

[REDACTED] PAPER NUMBER

2821

DATE MAILED: 04/10/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No. <b>09/846,786</b>	Applicant(s) <b>Holt et al.</b>
Examiner <b>Jim Clinger</b>	Art Unit <b>2821</b>

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1)  Responsive to communication(s) filed on Feb 15, 2002.
- 2a)  This action is FINAL.      2b)  This action is non-final.
- 3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

### Disposition of Claims

- 4)  Claim(s) 10-19 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5)  Claim(s) \_\_\_\_\_ is/are allowed.
- 6)  Claim(s) 10-12, 16, 18, and 19 is/are rejected.
- 7)  Claim(s) 13-15 and 17 is/are objected to.
- 8)  Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9)  The specification is objected to by the Examiner.
- 10)  The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11)  The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved.
- 12)  The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. § 119

- 13)  Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a) All b) Some\* c) None of:

1.  Certified copies of the priority documents have been received.
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

- 14)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

### Attachment(s)

- 15)  Notice of References Cited (PTO-892)      18)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 16)  Notice of Draftsperson's Patent Drawing Review (PTO-948)      19)  Notice of Informal Patent Application (PTO-152)
- 17)  Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_      20)  Other: \_\_\_\_\_

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## **DETAILED ACTION**

### ***Double Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321© may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 10-12, 16 and 18-19 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-4 of U.S. Patent No. 6,226,531. Although the conflicting claims are not identical, they are not patentably distinct from each other because the above referenced claims of Patent No. 6,226,531 recite the limitations of the noted claims of this application along with the additional limitation that the array have multiple sets of alternating rx only and tx/rx elements.

Claims 10 and 16, claim 1 of Patent 6,226,531 recites a multi dimensional phased array antenna, wide band digital radio for all channels performing rx and tx signal processing as recited.

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Claims 11 and 18, claim 3 of Patent 6,226,531 recites an array processor coupled to the radio to define a narrow beam.

Claims 12 and 19, claim 4 of Patent 6,226,531 recites an array processor coupled to the radio to define directivity patterns as recited.

Claims 16 and 18-19, these claims are method claims which recite the steps of providing the above referenced elements and limitations of the recited base station. Since the above recited base station is fully recited in Patent 6,226,531 by element, it obviously had to have been provided in steps in which each step corresponded to a specific element. Also, the step of using the provided device is obvious since any device with utility is provided for a use.

It would have been obvious to one of ordinary skill in the art at the time of the invention to use an antenna array without multiple sets of rx only and rx/tx elements as recited in Patent 6,226,531 to simplify fabrication of the antenna array.

It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the device recited in Patent 6,226,531 in steps corresponding to each element of the device as recited and use the device in its intended manner as recited in Patent 6,226,531 because devices with utility are used in their intended manner and because a device can not be constructed unless it is provided.

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***Response to Arguments***

3. Applicant's arguments with respect to claims 10-12, 16 and 18-19 have been considered but are moot in view of the new ground(s) of rejection.

***Allowable Subject Matter***

4. Claims 13-15 and 17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 13-15 and 17 are distinguished over the prior art by the limitation concerning sets of antenna elements being coupled to different radios. Proper motivation for combining references disclosing different radios used with different sets of antenna elements with references disclosing the remaining recited elements was not found in the prior art.

***Correspondence***

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Jim Clinger whose phone number is (703) 305-0619.

Any inquiry of a general nature or relating to the status of this application should be directed to the Technology Center whose telephone number is (703) 308-0956.

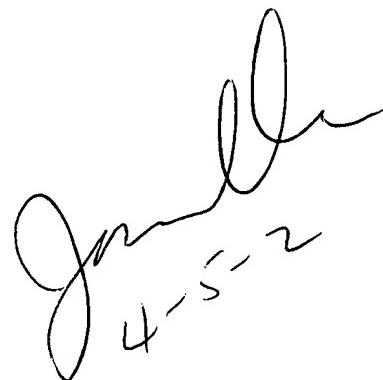
Papers related to Technology Center 2800 applications only may be submitted to Technology Center 2800 by facsimile transmission. Any transmission not to be considered an

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official response must be clearly marked "DRAFT". The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). The Technology Center Fax Center number is (703) 308-7722 or (703) 308-7724.

A handwritten signature consisting of stylized initials and a date. The date is written below the signature as "4-5-2".